IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.1912 OF 1989

M/s.Consortium Films ..Petitioner.

V/s.

Union of India & Ors. ..Respondents.

Mr.Simil Purohit with Ms.Mrudula Kadam i/b. Vimadalal & Co. for petitioner.

Mr.A.J.Rana, senior counsel with K.R. Choudhari i/b.K.C.Sidhwa for respondents.

CORAM : V.C. DAGA AND
J.P.DEVADHAR, JJ.

DATED : 5TH OCTOBER, 2005.

P.C. :-

1. This petition is directed against the order of the Collector of Customs (Appeals) (the first appellate authority) dated 27/6/1989 incorporated at Exhibit-I of this petition.

2. The undisputed facts are that the petitioner entered into two different contracts with to different firms located in two different countries, one in U.S.A. and another in U.K. and imported two different consignments in two different periods which the

petitioner contends to be Recording, scoring and dubbing equipments, if put together with the equipments imported by way of 1st consignment. The details and description of the goods imported by the petitioner by way of first consignment from U.K. are not available. However, the details of the goods imported on second occasion from U.S.A. with their description are as under :-

1) Unit of Re-Recording, Scoring E-Dubbing Equipment

2) R-106 35mm High Speed 4 Track

3) Master Pick-up Recorder

4) HP35 High Speed Holoscope Studio Reversing Projector with Lamp House & Power Supply.

5) Looping Console

6) 6 Digit Remote Production Counsel

Spare Parts / Cables for above

3. Petitioner contends that the equipments imported by them from two different countries on two different occasions, if put together then they would constitute Recording, scoring and dubbing equipments, falling in the category of cinematographic machine equipments and apparatus as such, they were entitled to

the benefit of exemption Notification No.109/86. He contends that this exemption benefit has been wrongly denied to the petitioner by the Assistant Collector of Customs, Bombay vide order dated 21/3/1989, which was unsuccessfully challenged before the first appellate authority under the Customs Act. The first appellate authority after summarising the submissions advanced by the rival parties recorded its findings as under:-

> Now the question is whether this item is eligible for the benefit of exemption notification 109/86. The answer is evidently in negative because the scope of exemption notification is restricted to the items falling under Chapter 90 which, as explained above, is no the case here. Next item of the Bill of Entry is projector with lamp. It is specifically covered by 9007.29 being cinematographic 35 mm projector. Cinematographic projector is well known by its own nomenclature and, therefore, there is no reason to call it a re-recording, scoring or dubbing equipment as claimed by the appellant. As a matter of fact, I see a separate exemption notification 93/86 as amended by 204/86 dated 28/2/86 which covers cinematographic projector specifically. Therefore, there would be no justification once again for the appellant to claim projector under different nomenclature for the purpose of obtaining benefit of exemption notification. In the final analysis, benefit of exemption notification would be available only to single instruments or equipments which does function of re-recording, scoring and dubbing, and that the benefit is not available to each and every cinematographic machine or equipment, which is the way the appellant wants the exemption notification to be interpreted. I am therefore, satisfied that the impugned order is quite proper and legal. The same is upheld and the Appeal rejected. "

4. The above findings are the subject matter of

the challenge in this petition. During the pendency of this petition, the petitioner vide order dated 28th September, 2005 was directed to disclose details and particulars as to who had exported two subject consignments, from whom those were purchased and under which bill of entry they were got released. The petitioner was also directed to disclose as to whether both consignments were disposed of, and if they were, then to whom and for what consideration they were sold.

5. The petitioner has filed an affidavit today contending that it is not in a position to supply all details sought by this Court. The petitioner is also not in a position to disclose the name of the firm from whom the second consignment was purchased by it. In this view of the matter, the petitioner did not comply with the order passed by this Court on 28/5/2005. The petition, thus, suffers from lack of material particulars and / or details necessary for adjudication of the issue raised herein.

6. Apart from the above, if one turns to the findings recorded by the first appellate authority, no fault can be found with the same, as the view taken there is a reasonable and possible view on the basis of the material available on record. It is really beyond imagination that one machine would be sold by two

different manufacturers located in two different countries, that too in parts to make it one unit in third country. The submission advanced is devoid of any substance and the same is liable to be dismissed.

7. It is needless to observe that it would be open for the Revenue to invoke the bank guarantee and proceed to recover the amount due and recoverable from the petitioner with interest thereon at the rate of 10% p.a. from the date of the interim order till the date of recovery, since the Revenue was out of pocket with the amount, which was secured by way of bank guarantee.

8. Petition is, thus dismissed in terms of this order. Rule stands discharged with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)